IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7406 OF 2004

Dada Tukaram Shewale & Anr. .. Petitioners.
Vs.
Revubai Genu Shewale & Ors. .. Respondents.

Mr.S.R.Page for the petitioners.

CORAM : D.B.BHOSALE, J.

DATED : 8TH SEPTEMBER, 2004

P.C.:

. Heard Mr.Page, learned counsel for the petitioners.

2. The petitioners have taken exception to the order dated 28.4.2004 passed by the learned 8th Additional District Judge, Pune below Exhibit-51 filed in Civil Appeal No.86 of 1995 by which the prayer of the petitioner seeking permission to examine the scribe of the Will at the stage of appeal has been rejected. The Will was attested by the two witnesses who were examined by the petitioners and the trial court after considering their evidence disbelieved the execution of the Will. In view of this the petitioners had filed an application under Order 41 Rule 27(1)(b) of Civil Procedure Code for leading evidence of the scribe of Will which was rejected by the learned Judge vide order dated 11.11.2003 and against that order

the petitioners had filed writ petition bearing No.2179 of 2004. The said order was confirmed in the writ petition vide order dated 16.3.2004. However, a liberty was given to the petitioners to file fresh application under Order 41 Rule 27(b) at the time of final hearing of the appeal so as to decide the same alongwith the appeal in accordance with law. In view thereof the petitioners filed application - Exhibit-51 which came to be rejected by the learned District Judge, holding that he does not require any other witness much less the scribe to be examined in order to pronounce the judgment or for any other substantial cause. The trial court seems to have disbelieved the attesting witneses, whose evidence he did not find sufficent to establish the execution of Will deed and, therefore, according to the learned Judge the evidence of scribe would not change the complexion of the matter. Considering the overall facts and circumstances of the case and the order passed by this court dated 16.3.2004 in Writ Petition No.2179 of 2004, the impugned order dated 28.4.2004 and other material placed before me I am satisfied that no case warranting interference in the impugned order is made out by the petitioners. The writ petition, therefore, fails and is dismissed as such.

(D.B.Bhosale, J.)